REMARKS

Claims 29-40 are pending in the present application, of which claims 29-40 are currently under examination. Claims 1-28 were previously cancelled. Applicant has amended claims 29, 33, and 37-40, and respectfully requests reconsideration of the application as amended herein. Support for these amendments can be found in the specification (e.g., page 6, lines 24-26, and pages 14-16) and claims of the application as filed. No new matter has been added by these amendments.

Applicant respectfully requests entry of the foregoing amendments and reconsideration of the application in light of the amendments above and the remarks below.

Claim Rejections under 35 U.S.C. § 103

In the Office Action dated November 30, 2007 ("Office Action"), claims 29-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,898,682 to Kanai ("Kanai") in view of U.S. Patent No. 6,567,682 to Moon ("Moon"). Applicant respectfully traverses this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, the Examiner must determine whether there is "an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds "cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367

(Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 29-40 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Independent Claims 29, 33, 37

Regarding independent claims 29, 33 and 37, Applicant has amended independent claims 29, 33 and 37 to include claim limitations not taught or suggested in the cited references. Applicant's amended independent claims 29, 33 and 37, each recite, in part, "*detecting an* ***unbalanced quality of power control signals simultaneously received*** *at a plurality of base station transceivers* from a wireless device," which is not taught or suggested in the cited references.

The Office Action alleges, in part:

> Regarding claim 29 … Regarding claim 33 … Regarding claim 37, … Kanai discloses [] detecting an ***unbalanced quality of a power control signal received at a plurality of base station transceivers*** from a wireless device (which reads on column 2 lines 24-25) …. (Office Action, pp. 3-6; emphasis added).

Applicant respectfully submits that neither Kanai nor Moon, either individually or in any proper combination, teaches or suggests Applicant's invention as claimed in independent claims 29, 33 and 37, which each recite, in part, "*detecting an* ***unbalanced quality of power control signals simultaneously received at a plurality of base station transceivers*** from a wireless device". At the citation to Kanai, Kanai discloses that a quality is monitored at a *single* base station and therefore the "quality" **cannot** be a composite from signals from multiple base stations. Specifically at the alleged citation, Kanai discloses:

> [A] radio channel control apparatus is used **in a base station** of a CDMA cellular system to control communication which is **carried out between the base station and mobile stations** in a radio zone by the use of code-division multiplexed radio channels and a control channel, with a communication **quality monitored by the base station**. (Kanai, col. 2, lines 19-25; emphasis added).

Clearly, Kanai teaches a quality monitored by a base station. However, Applicant's invention as presently claimed recites, in part, "*detecting an* ***unbalanced quality of power control signals simultaneously received*** *at a* ***plurality*** ***of base station transceivers*** from a wireless device". Accordingly, Kanai neither teaches of either "power control signals … received at a plurality of base station transceivers," nor does Kanai teach of detecting an "unbalanced quality" formed from a plurality of "control signals".

The Office Action cites Moon for teaching reverse pilot channels.

Therefore, because neither Kanai nor Moon teaches or suggests "*detecting an* ***unbalanced quality of power control signals simultaneously received*** *at a* ***plurality*** ***of base station transceivers*** from a wireless device" as claimed by Applicant, these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. §103, Applicant's invention as claimed in independent claims 29, 33 and 37. Accordingly, Applicant respectfully requests the rejection of independent claims 29, 33 and 37 be withdrawn.

Dependent Claims 30-32, 34-36, 38-40

The nonobviousness of independent claim 29 precludes a rejection of claims 30-32 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 29 and claims 30-32 which depend therefrom.

The nonobviousness of independent claim 33 precludes a rejection of claims 34-36 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 33 and claims 34-36 which depend therefrom.

The nonobviousness of independent claim 37 precludes a rejection of claims 38-40 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also*

MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 37 and claims 38-40 which depend therefrom.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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